BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

A
Opinions of the Courts Below

The opinion of the Court of Special Sessions, the County Court of Westchester County and the certificate of Judge Irving Lehman of the Court of Appeals of New York, are not reported, but appear in the record at, respectively, pages 24-26, 31-32 and 36-37.

B
Jurisdiction

1. *Timeliness.*

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code [28 U. S. C. A. 344 (b)].

The judgment of the County Court of Westchester County was rendered and entered on May 2, 1941. R. 32.

Article 520 of the Code of Criminal Procedure provides for the making of an application for leave to appeal to the Court of Appeals of the State of New York, which is not a matter of right but which is addressed to the discretion of the Chief Judge of the Court of Appeals. On May 28, 1941, within the time required by said article, petitioner duly presented to Chief Judge Lehman said application for leave to appeal. R. 36, 37.

The application was not determined by the Chief Judge of the Court of Appeals until October 2, 1941. (R. 37) The judgment of the County Court of Westchester County became final on October 2, 1941, the date of the denial of said application for leave to appeal to the Court of Appeals.

The petition for certiorari is duly filed and presented to this Court within ninety days from such date and is therefore timely.

2. *The statute.*

The validity of state legislation under the United States Constitution was drawn in question in this case and the decision of each of the New York courts was wrongfully in favor of this validity. The legislation here challenged is a statute of the State of New York, Penal Law Section 2147, and is set forth, together with other pertinent statutes in the Petition for Writ of Certiorari, pages 6 to 8, supra.

In deciding that the statute is not unconstitutional because it abridges freedom of speech, press and worship in violation of the Fourteenth Amendment to the United States Constitution, the County Court of Westchester County held that the statute properly applied to the activity of petitioner, and decided in favor of its validity on its face and as so applied. R. 31, 32.

Petitioner duly and properly urged in all the courts below that the said statute as construed and applied to him was invalid because it deprived him of the above described rights, contrary to Section One of the Fourteenth Amendment to the United States Constitution.

From the very beginning, therefore, the validity of the legislation here challenged as being in contravention of the Fourteenth Amendment was thus drawn in question. The judgment of the trial court was in favor of the validity of such statute and also the County Court of Westchester County found in favor of the validity thereof, overruling such Federal questions.

3. *County Court of Westchester County, the highest Court in the State of New York in which a decision could be had.*

The County Court of Westchester County was the highest court in the State of New York in which a decision could be had in this cause, although such is not the highest court in the State of New York. The order of affirmance by the County Court was not susceptible to further review in the state courts by a matter of right. All proper steps were taken for further review in presenting the case to Chief Judge

Irving Lehman of the Court of Appeals of New York. He refused to exercise his discretionary power and allow a review by the New York Court of Appeals. His refusal to exercise his sound discretion made the County Court the court of last resort and therefore the petition for certiorari is to the County Court of Westchester County, State of New York. See *Bacon* v. *Texas,* 163 U. S. 207, 215; *Sullivan* v. *Texas,* 207 U. S. 416, 422; *San Antonio & A. P. R. Co.* v. *Wagner,* 241 U. S. 476, 477; *Randall* v. *Board of Commissioners of Tippecanoe County, Ind.,* 261 U. S. 252; *Western Union Tel. Co.* v. *Crovo,* 220 U. S. 364, 366; *Stanley* v. *Schwalby,* 162 U. S. 255, 269; *Norfolk & S. Turnpike Co.* v. *Virginia,* 225 U. S. 264, 269; *Cuyahoga Power Co.* v. *Northern Realty Co.,* 244 U. S. 300, 302, 303; *Western Union Tel. Co.* v. *Priester,* 276 U. S. 252, 258; *Pennsylvania Railroad Co.* v. *Illinois Brick Co.,* 297 U. S. 447, 453; *Mellon* v. *O'Neill,* 275 U. S. 212, 213; *Second National Bank of Cincinnati, Ohio,* v. *First National Bank of Okeana, Ohio,* 242 U. S. 600; *Chesapeake & Ohio Ry. Co.* v. *Kuhn,* 284 U. S. 44, 45, 46.

C
Statement of the Case

A full statement of the case has been given herein, pages 1 to 9, supra, of the Petition for Writ of Certiorari and for the sake of brevity will not be repeated, but is here referred to.

D
Specification of Errors

Petitioner assigns the following errors in the record and the proceedings of said case:

1. The County Court of Westchester County committed fundamental error in affirming the judgment of the Court of Special Sessions, by failing to hold that the statute, as construed and applied, deprived petitioner of his right of

freedom to worship Almighty God as by Him commanded in the Bible and according to dictates of petitioner's conscience, and of freedom of the press, contrary to Section One of the Fourteenth Amendment to the United States Constitution.

2. The County Court of Westchester County committed fundamental error in failing to hold that the statute did not include the activity of the petitioner engaged in preaching the Gospel of God's Kingdom.

For these reasons, it is reversible error for the County Court of Westchester County to affirm the judgment of conviction rendered by the Court of Special Sessions and hold that the statute was valid and constitutional as construed and applied.

ARGUMENT

The statute is invalid and unconstitutional as construed and applied because it deprives petitioner of his right of freedom to worship Almighty God as by Him commanded in the Bible and according to dictates of petitioner's conscience, and of freedom of the press, contrary to Section One of the Fourteenth Amendment to the United States Constitution.

Due to the fact that enforcement of "blue laws" or desecration-of-Sabbath laws has been relegated to the Dark Ages and the "horse and buggy" days, there have been no decisions on the question that can be called recent, except that of *State of Iowa* v. *Paul E. Mead et al.*, 300 N. W. 523, decided by the Iowa Supreme Court on November 12, 1941, to be referred to later. However, a search of the authorities under statutes identical with this in other states shows conclusively that the activity of petitioner does not come within

he prohibition of the statute, but within the exception of work of charity and necessity".

The plain and clear purpose of this law is to protect everyne in his way of worship on the Sabbath.

Jehovah's witnesses are preaching the Gospel; and this ctivity of preaching, although not practiced as do religionsts, is clearly within the exception of the statute, and not ithin the prohibition.

It is generally understood, by almost everyone, that all ssociations of persons who engage in ecclesiastical cereonies and *also* societies whose members study the Bible nd worship Almighty God are religious organizations. *Within the meaning of the law,* ALL such associations and ocieties are considered *religious* organizations; but accordng to the Bible definition, there is a difference.

Any formal worship of another as a superior or supreme ne by persons who rely upon traditional teachings of men, ogether with ceremonies, is religion.

A servant and follower of Jesus Christ is one who strictly nd exclusively adheres to the Word of Almighty God, Jehoah, in spirit and in truth, and does so *without* indulging formal ceremonies. Christ Jesus never was a religionist, nd His followers, therefore, are not religionists, within the iblical meaning of that term. Accordingly they follow in is footsteps in going from house to house.—Mark 6:6; uke 8:1; Acts 20:20.

But from the *legal point of view,* all religious organizaons and also every corporate group of persons who serve lmighty God are put in the same class; and hence the petioner is entitled to the benefit of the exemption or exption put in the law. The law does not contemplate and as never intended to interfere with one's way of worship, egardless of what way or means he employs. To say that does apply means to establish a state *religion* by prohibitg that practice which does not seem pleasing to the law nforcement officers.

It may be argued that simultaneous acceptance of money

contributions from recipients of the literature distributed brings Jehovah's witnesses within the statutory terms "public selling or offering for sale of any property". Again we say that the exception applies to this particular provision of the statute also. The "buying and selling" here prohibited is the buying and selling of ordinary commercial articles of merchandise, and not articles employed in preaching the Gospel. Furthermore, to *sell* means to make a profit, and here the undisputed evidence is that there is no profit made whatsoever. On the contrary, the work the petitioner did in preaching the Gospel is carried on at a loss. It is shown in the undisputed evidence that it is a work of charity.

A clergyman of a religious organization occupies his pulpit on Sunday, talks to or harangues the members and others in the congregation, and solicits money from them and receives money. Often this is for his salary, but it may be for missionary work; but whatever it is for, the courts have held that such action is not a violation of the law. See *In re Hull,* 18 Idaho 175.

Surely calling at a person's home on Sunday and quietly talking to the resident about the Word of God and the wonderful provision made by Almighty God as described in His Word, and the warning commanded by Almighty God to be given to the people, cannot be held to interfere with public morals, health or peace and safety. The *real purpose* of laws such as the Sabbath law here in question, regulating what shall be done on Sundays, is to restrain business conducted for private pecuniary gain to the dealer or performer of such activity, and general *commercial* transactions carried on ordinarily on other days of the week.

The work of Jehovah's witnesses is neither "commercial" nor "business" conducted for private pecuniary gain. No profit was made, as was testified by petitioner. He delivered three of such booklets free of charge and from a recipient of one booklet he received a contribution of five cents. The undisputed evidence shows that his income did not exceed

the amount of money that it cost him to distribute the literature. See *Bennett* v. *Brooks,* 91 Mass. 118.

Furthermore, to bring an act within the terms and provisions of this particular statute, it must be shown that the petitioner's activity was a "commercial" or "business" one. The undisputed evidence in this case shows that he was not engaged in a "commercial" or "business" transaction, but solely in preaching the Gospel.

The statute has been wrongly construed. It is its misapplication that makes it unconstitutional. *Concordia Fire Ins. Co.* v. *Illinois,* 292 U. S. 535, 545.

The Scriptures declare that all persons who are in a covenant with Almighty God, JEHOVAH, and who sincerely obey His law and serve Him by declaring His Name publicly and from door to door are Jehovah's witnesses. (Isaiah 43:9-12) The Lord Jesus Christ is Jehovah's Chief Witness, and said that He came to earth to bear witness to the truth; and that His followers must likewise bear witness to the truth.

Recognizing this obligation, Jesus Christ's apostle Peter wrote that all such of Jehovah's witnesses must follow in the footsteps of Christ Jesus by bearing witness to the truth. (1 Peter 2:9, 21) As such ministers of Jehovah God and as Jehovah's witnesses, each of them is required by God's written law contained in the Bible to go from house to house declaring the good news of His Kingdom and the day of His vengeance. (Isaiah 61:1-3; Matthew 24:14) It is said in the Bible that Christ Jesus went round about the villages teaching, from house to house. (Mark 6:6; Luke 8:1) So also did the petitioner. Christ Jesus expressly commanded (Matthew 10:7, 12-14) that all of His followers must preach the Gospel of God's Kingdom by going from house to house. (Acts 20:20) To worship Almighty God means to obey His commandments, as it is written: "Thou shalt worship the Lord thy God, and him only shalt thou serve." (Matthew 4:10) "God is a Spirit! and they that worship him must worship him in spirit and in truth." (John 4:24) To *worship*

means to serve, which service can be rendered rightly to Jehovah God alone, and thus He is made the object of supreme affection and obedience.

By some it may be contended that going from door to door with Bible literature is not a way of worshiping Almighty God.

This Court and the Congress in various statutes specifically define that no person has the right to say whether the act of another is or is not a genuinely obedient act of worship of Almighty God. See *Reynolds* v. *United States,* 98 U. S. 145, 162, 163. That case cites with approval the bill passed by the House of Delegates of Virginia, the preamble of which defines religious freedom, reciting:

> "that to suffer the civil magistrate to intrude his powers into the field of opinion, . . . is a dangerous fallacy which at once destroys all religious liberty", and "it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order."

The *way* of worshiping Almighty God as done by petitioner in this case is commanded by the written law of Almighty God. God's law is Supreme. This rule is recognized by Blackstone in his *Commentaries* (Chase 3d ed., pp. 5-7) and Cooley in *Constitutional Limitations,* 8th ed., p. 968.

The petitioner greatly desires to have life and to live, and thus he must serve Almighty God; for it is written that God is the fountain of life. (Psalm 36:9) One who desires to live must obey God's law.—John 17:3.

In this connection we call attention to the opinion of this Court in *Schneider* v. *State,* 308 U. S. 147, where the Court held that the most effective way of distributing literature was from house to house.

With respect to the question of receiving contributions and sale, this Court held that a statute to regulate contributions for a religious organization was unconstitutional as

construed and applied to the activity of Jehovah's witnesses. *Cantwell* v. *Connecticut,* 310 U. S. 296.

The pernicious doctrine that constitutionally secured "free press" extends only to *free* or gift distribution of literature is a new theory unheard of until modern-day totalitarian principles have pushed to the fore. Such erroneous claim means that a person would be entitled to the protection of the constitutional guarantees of freedom of press against statutes such as this if he gave away printed matter, but if he *sold* such matter, he would not be entitled to this fundamental personal privilege. The claim is, therefore *foolish.* Newspapers, magazines and other periodicals are sold daily including Sunday, on the streets and elsewhere in every community of this land. Money is received in exchange. The newspaper industry is a profitable one and many have grown wealthy through it. They are entitled to all the guarantees of freedom of the press, even though they do gain great wealth through it.

One who is doing good, such as the petitioner here, by constantly and continuously bringing printed matter on subjects of great importance to the attention of the public, through "press activity", is entitled to let those receiving the information aid in keeping the "good work alive and going" by contributing a small sum with which to print more like literature. It is a ridiculous stalemate to hold that one must "go bankrupt" by forced "free" distribution of literature in order to receive the "free press" protection of the Constitution.

Such a reprehensible contention, if permitted to stand, means the death knell to freedom of press in America.

The simultaneous acceptance of money contributions from some recipients of the literature is only incidental to the main activity of petitioner. It is a means to an end, that is to say, to aid in defraying cost of further proclamation of the Kingdom message of Almighty God.

The theory advanced by the Court of Special Sessions, approved by the Westchester County Court, would make

constitutional guarantee of freedom of the press the sole prerogative of the rich. This would "sandbag" the Constitution and sabotage all the liberties of the people.

In this connection we call to the Court's attention the case of *Commonwealth* (Borough of Clearfield) v. *Reid et ux.*, 20 A. 2d 841, where President Judge Keller, in setting aside conviction of two of Jehovah's witnesses, said, among other things:

> "This historical reference to 'pamphlets' in that [*Lovell*] opinion and in other opinions of that court (Schneider v. State . . . ; Thornhill v. Alabama, 310 U. S. 88, 97; . . . etc.) is not limited to 'pamphlets' which are distributed without cost. Every student of history knows that the 'pamphlets' referred to by Chief Justice Hughes in his opinion, and by Mr. Justice Sutherland in the Grosjean case, were not for the most part circulated *gratis*, but were distributed to subscribers or sold."

See also the case of *Hannan et al.* v. *City of Haverhill et al.*, 120 F. 2d 87, where the Circuit Court of Appeals for the First Circuit said:

> " . . . Such use of the streets and public places, sanctioned by ancient usage, has become part of the liberties of the people protected by the Fourteenth Amendment from state encroachment. Hague v. C.I.O., 307 U. S. 496, 515; Schneider v. State, 308 U. S. 147, 163; Cantwell v. Connecticut, 310 U. S. 296, 303. We take it also that this constitutional right to make reasonable use of the streets for the purpose of distributing literature is *not limited to handing it out free of charge, but includes also the right to offer the literature for sale* so as to defray the cost of publication—otherwise, the circulation of one's opinions or the propagation of one's faith on an extensive scale would

tend to become a prerogative of the well-to-do. Cf. Lovell v. Griffin, 303 U. S. 444, 452. In Cantwell v. Connecticut, 310 U. S. 296, a state statute was invalidated as an unconstitutional restriction on the right to solicit funds for religious objects."

This type of law has been repeatedly held not to be applicable to solicitation of funds and contracts for the payment of money when solicited or contracted for by a religious organization or church on Sunday. In this connection, see the cases of:

Idaho v. Morris
155 P. 296

Commonwealth v. Nesbit (Pa.)
34 Pa. St. Rep. 398

Cronan v. Boston
136 Mass. 384

State v. Needham
134 Kan. 155; 4 P. 2d 464

Dale v. Knepp
98 Pa. St. Rep. 389, 392

Bryan v. Watson
127 Ind. 42; 62 N. E. 666

Ft. Madison First M. E. Church v. Donnell
81 N. W. 171; 110 Iowa 5

Allen v. Duffie
43 Mich. 1; 4 N. W. 427; 38 Am. Rep. 159

In re Hull
18 Idaho 175

Bennett v. Brooks
91 Mass. 118

Pulitzer Pub. Co. v. McNichols (Mo.)
181 S. W. 1

60 Corpus Juris 1056

Finally we call to the Court's attention a decision by the Supreme Court of Iowa in the case of *State of Iowa* v. *Mead et al.*, 300 N. W. 523, decided November 12, 1941, which is directly in point in this matter, where the appellants were charged with a violation of the identical statute in which complaint it was alleged that Jehovah's witnesses desecrated the Sabbath in that "they did sell and attempt to sell literature on Sunday". In that case the court said as follows:

> "The state also contends the distribution of the booklets and occasional receipt of the sum of ten cents constituted 'selling property' within the prohibition of the act. However, appellants were not engaged in selling booklets. The alleged sales were merely incidental and collateral to appellants' main object which was to preach and publicize the doctrines of their order. Indicative of this was the practice of giving booklets to those unwilling to contribute. Appellants regarded the amounts received as donations and this was frequently the thought of those who gave money. Appellants were teaching and spreading their religious views without compensation and at their own expense. All receipts from the booklets were placed in a publication fund, which it was necessary to supplement by voluntary contributions to cover the cost of publishing the booklets. The commercial aspect of sales was absent. We do not think the statute contemplates that the distribution of booklets of this nature and under these particular circumstances constitutes desecrating the Sabbath."

Conclusion

It is therefore submitted that this case is one calling for the exercise by this Court of its supervisory powers to the end that errors complained of may be corrected and that to such end a writ of certiorari ought to be granted that this Court review the decision of the County Court of Westchester County of New York.

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